IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3207 OF 1986

Gupta Soaps (Regd) ..Plaintiffs

Vs.

I.V.P.Ltd. ..Defendants

Mr.K.T.Kukreja for the plaintiffs

None for the defendants

CORAM : S.U.KAMDAR, J
DATED : 24TH FEBRUARY, 2006

P.C.:

1. The present suit is filed for the recovery of sum of Rs.1,97,409.42. The claim is based on refund of excise duty. It is the case of the plaintiffs that the plaintiffs paid excise duty to the defendants on the material purchased by the defendants. However, by the orders passed by the Excise authorities the said amount has been refunded to the defendants which the plaintiffs are entitled to.

2. Under clause 3 of the terms and conditions of the contract between the parties the plaintiffs

were liable to pay the excise duty only if the said amount is to be recovered by the authorities imposing such tax. In an event, if the amount is not recoverable the said amount was not to be paid. Relevant clause 3 of the said contract has been reproduced on page 2 of the plaint which reads as under:

> "All Octroi duty, Sales Tax, Customs Duty, Excise Duty and all other taxes, levies and imports, present or future, and as covered by the said order (including all taxes, duties levies and imports in respect of any intermediates products, emerging during the course of manufacture and/or processing of the goods under the order and any taxes, duties, levies or imports which may be levied or recovered at any intermediate stage during the course of manufacture and/or processing of the goods) shall be borne and paid by the buyer immediately on the same becoming due and payable to the authority recovering or imposing such taxes, duties levies or imports. It is expressly agreed and understood that seller shall not be liable or responsible in any manner whatsoever for the aforesaid taxes, duties, levies or imports or in respect of any penalties, fines or other action or proceedings whatsoever taken by any authority in connection with or in respect of such taxes, duties, levies or imports."

3. The present suit is filed for the recovery of the amount because according to the plaintiffs the said amount has been refunded by authorities and authorities have communicated to the defendants

by letter dt.27.10.83 that the said amount has been paid to the defendants. The said letter is produced at Ex.E to the plaint. Plaintiffs have also produced original documents. The same are taken on record and marked Ex.A collectively. Defendants are served. Defendants have filed Vakalatnama. However, none appeared for the defendants when the matter was on board on 23.2.06. Today also when the matter is kept for ex-parte decree, none appears for the defendants. There is no written statement filed by the defendants. In the light of the aforesaid, there shall be decree in favour of the plaintiffs and against the defendants in terms of prayer clause (a) with further interest thereon @ 12% simple interest from the date of suit till payment and/or realisation. Suit disposed of. Refund of court fee as per rules.